

Options and Opportunities for Whole-of-Government Contributions in the Campaign Against International Piracy

Capstone Summary

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Introduction

Until recently, maritime piracy had been at a relatively low level and received little attention from the international community. When individual piracy acts did occur, the affected nation pursued its own counterpiracy efforts as part of its ongoing criminal prevention and prosecution efforts. The increase in piracy in the Straits of Malacca in 2003 and 2004 garnered worldwide attention and concern, but the affected countries in the region largely handled it.

Piracy off the Somali coast has changed the worldwide perception of the problem. Not only have the number of pirate attacks in this area increased, but the nature of piracy has changed. It is no longer the quick criminal act of seizing the valuables aboard a ship. Somali pirates view the ship, cargo, and crew together as the target to be seized and held for ransom. Once seized, negotiations for payment of the ransom and release of the ship can take months. In Somalia, a successful pirate attack is not an event but the start of a drama that plays out over time and within full view of the international community.

Somali piracy also is not just a regional problem but an international one. International attention was raised when pirates seized the Belize-flagged MV *Faina* in September 2008. A Ukrainian company operated the *Faina*, and it was carrying weapons, including 33 T-72 tanks, and a large amount of ammunition. While there was concern that these weapons would find their way into Africa through Somalia, the pirates were only interested in holding the ship for ransom. The ship and crew, with cargo intact, were released in February 2009 after payment of the ransom. The November 2008 seizure of the Liberian-flagged MV *Sirius Star*, containing a cargo of more than \$100 million in oil bound for the United States, and the April 2009 attempted seizure of the U.S.-flagged MV *Maersk Alabama* showed that even the United States is vulnerable to Somali piracy.

The circumstances in Somalia facilitated this increase in piracy. The country is without a functioning government whose control extends throughout its territory and, therefore, lacks the institutions to counter piracy as a criminal problem. Somalia also lacks robust economic development and presents few opportunities for its population to earn a living. Under such circumstances, it is not difficult to recruit pirates. The maritime capabilities of other nations in the region are limited, and those nations are unable to extend their own counterpiracy efforts much beyond their own territorial waters. Because of these limitations, Somali piracy is an international problem that requires an international response.

Our study

Despite recent efforts of the global community to protect shipping, secure sea lines of communications, and interdict pirates, the problem of Somali piracy persists. U.S. Naval Forces Africa (USNAFAF) believes that a military response alone cannot address the underlying root causes of piracy and may prove to be less effective and efficient than a more comprehensive and strategic approach that integrates the efforts of the United States and other governments, commercial concerns, and the international community. For this reason, USNAFAF asked the Center for Naval Analyses to examine current solutions and determine potential effective whole-of-government (and international) solutions to piracy.

As part of this study, we addressed the following issues:

- What is the process of international piracy, how did that process evolve to present-day circumstances, what are the factors that make it successful, and what are the factors that make it vulnerable to international actions?
- What are the key elements to a comprehensive approach to addressing the problem of international piracy?
- What are current and planned U.S. government and international counterpiracy initiatives, and how effective are they?

We examined the current whole-of-government (and international) activities for addressing piracy. These sets of activities are further characterized by their effects on pirates (e.g., are the operations designed to prevent pirate attacks or to respond to the pirates themselves?).

To analyze these effects, one must understand piracy as an enterprise and individual pirate groups: how they recruit, how they get resources, how they operate, and how they profit from their activities. Once we understand the piracy enterprise model, we can analyze current, proposed, and possible counterpiracy solutions and how they target the vulnerabilities in the pirate enterprise. We then can develop a framework for organizing and assessing whole-of-government counterpiracy approaches and the role of the military in general and USNAF in particular.

This report presents a capstone summary of the results of the study. The details of the analyses and results are available in the other four study reports. These reports analyze the incidence of piracy in Africa [1], the pirate enterprises in Somalia and the Gulf of Guinea¹ [2], the international and national legal authorities for counterpiracy [3], and our framework for a whole-of-government approach to counterpiracy [4].

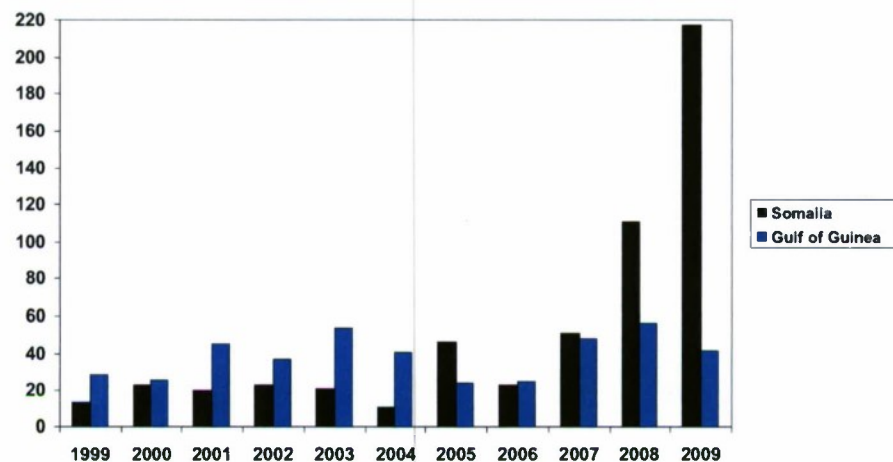
Piracy in Africa

To better understand piracy in Africa, we analyzed pirate incidents that were reported to the International Maritime Board (IMB) from 1999 through the first quarter of 2010. Our focus was on understanding the characteristics of the incidents, such as where and when do they occur, what happens during an attack, what are the differences between attacks in different regions, and who reacts to an attack? Some incidents involve robbery of goods while a ship is in port, while others involve taking ships and crews for ransom. Understanding the characteristics of piracy is important to finding a solution to curtail piracy. Just as the character of the attacks differs, so does the appropriate response.

1. To better understand Somali piracy, we also examined piracy throughout Africa, with a focus on piracy in the Gulf of Guinea as a comparison.

The majority of pirate attacks in Africa take place off the Somali coast or in the Gulf of Guinea region. These two areas account for more than 80 percent of the more than 1,200 pirate incidents we analyzed. Prior to 2008, there were more reported pirate incidents in the Gulf of Guinea area than off the Somali coast, though the numbers in the two regions were comparable. The watershed year for piracy in Somalia was 2008 when the number of incidents there exploded, while the number of incidents in the Gulf of Guinea remained roughly the same as in previous years. This is shown in figure 1.

Figure 1. Piracy incidents in Somalia and the Gulf of Guinea, 1999–2009^a



a. From [1].

Piracy incidents in the waters surrounding Somalia have a decidedly different character than those occurring in other areas of Africa. The nature of Somali piracy is similar to what we have seen historically: hijacking ships at sea in international waters and holding them for ransom. Occurrences of armed robbery tend to dominate pirate incidents in other African regions while ships are at anchor or in port.

Another difference we noted was the seasonal nature of piracy off Somalia, where pirate incident trends tended to follow weather patterns. The monsoon season in the Indian Ocean occurs from both December to February and from May to October. Accordingly, pirate attacks off Somalia generally decrease during these months as the seas become less suitable for small boat operators. In contrast, pirate incidents in the Gulf of Guinea remain fairly consistent throughout

the year, though there is a somewhat higher number of incidents in January. For both regions, there is little change in the nature of the attacks carried out throughout the year.

The sharp contrast between the nature of piracy in Somalia and in other African regions indicates that Somali pirates have developed a specific type of piracy. This difference affects the counterpiracy actions taken in response to each type of piracy. The response needed to combat hijackings occurring while a ship is in international waters is different than the response needed to combat robberies occurring while a ship is stopped in territorial waters.

Our analysis of the responses to these two types of piracy also demonstrated differences. We found that as the number of hijackings off the Somali coast has increased, the international military response has also increased. On the other hand, incidents in the Gulf of Guinea region have received little international attention. Unfortunately, neither the countries in the Somali region nor those in the Gulf of Guinea region have demonstrated either the national response capability or, perhaps, the political will to respond to these incidents. The lack of a regional response suggests that the international community may need to provide either the capability or the impetus for counterpiracy operations.

The pirate enterprise

The “piracy enterprise” consists of several elements, including recruitment of people, finances, intelligence and knowledge of the maritime space, shipping patterns, and the vulnerabilities of targets, as well as tactics and operations, internal organization, connections to the local communities, and the creation of “safe havens” ashore.

Somali piracy has evolved from the simple model of coastal residents accosting fishing vessels in Somali waters and extorting payments at gunpoint, to complex criminal pirate groups staging and deploying multiple action groups² to seize large commercial ships far out at sea, take them back to a safe homeport, and hold them for months for negotiated ransoms.

Pirates in the Gulf of Guinea are engaged in what can best be described as “robbery at sea” attacks. A small number of recent attempts have mimicked the more sophisticated attacks on commercial vessels and tankers, but the mainstay of Gulf of Guinea piracy has been “smash and grab” night strikes on ships at anchor or oil platforms. While this is a different type of piracy/robbery, using the enterprise model reveals much about how it works, why it has not evolved like in Somalia, and what vulnerabilities it has.

While piracy in Somalia and the Gulf of Guinea has developed in different ways, from different histories, they can both be studied through the enterprise lens. We find that pirate activities in both areas can be broken down along the above lines. Doing so can enable governments and navies to develop counterpiracy programs to prevent, disrupt, and defeat piracy. The effectiveness of those programs will be contingent on how well they are matched to the particular piracy enterprise practices in each region.

Based on the analysis of IMB piracy incident data, we conclude that piracy on both sides of Africa has five distinct characteristics.

- **First, pirates are opportunistic.** Piracy exists where governance on land is weak or nonexistent, where easy targets are present, and where maritime powers have not enforced order and rules at sea. Piracy flourishes where economic chaos and disruption creates incentives for recruits to be lured by the chances of short-term lucrative gains, balanced against weak enforcement mechanisms unable/unwilling to impose significant costs.
 - **Second, pirates can adapt.** The first successes of piracy lead to counterpiracy measures by merchants, insurance companies, ship crews, navies, and governments. Pirates react to these measures by changing how they attack and where they attack. They develop new strategies for holding ships and people as well. Successful counterpiracy is challenging because the pirates “get a vote,” meaning that the pirates respond to any counterpiracy actions to restore the situation in their favor.
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2. Pirate action groups normally consist of one large ship that provides logistics support and functions as a base of operations and several small fast attack boats.

- **Third, the pirate enterprise is relatively easy to start and sustain.** The capital costs of weapons, equipment, and small boats are within their grasp. One successful attack can sustain many pirates and clan members and set up an average pirate with income equal to that of 20 years' work for his peers.
- **Fourth, piracy is a relatively decentralized enterprise.** It is broken into many clans and gangs. It is an "open industry," with easy access where young men with guns and experience in conflict can enlist with any one of many gangs. This makes piracy hard to deter and target. There is no central authority or "center of gravity" to disrupt or defeat.
- **Fifth, successful piracy is dependent on safe havens ashore.** Pirate enterprises need places to hide, plan, enjoy the fruits of their labor, or hold ships/hostages. If local governments cannot enforce law ashore, or if coalition maritime forces cannot or will not remove safe havens, the pirate enterprise can go on for many years. Without safe havens, the enterprise quickly dies.

International legal support for counterpiracy

With regards to international law, piracy is addressed in the 1982 Third United Nations Convention on the Law of the Seas (UNCLOS III). The convention provides the legal basis for nations to take actions against pirates in international waters and areas outside the legal jurisdiction of any other state. Essentially, UNCLOS III allows every state to apprehend, arrest, and prosecute pirates and seize their property. Pirates who are arrested are effectively subject to the laws of the nations that seized them.

The international community recognized the situation in Somalia was different because of the lack of a functioning government that could control its own waters and passed a number of United Nations Security Council resolutions that have extended these legal authorities. Under the current international legal framework, nations have the ability to take actions to prevent piracy within the territorial waters off the Somali coast and, with some limitations, to take action on the territory of Somalia itself.

For the United States, the crime of piracy and the legal authorities to take actions against pirates are established in the U.S. Code. These laws provide the President with the authority to direct actions for the prevention of piracy and the seizure of pirate ships and their crews. They allow for some actions to be taken on behalf of other nations' ships, such as the seizure of pirates who have attacked ships other nations own, and the designation of a vessel in service of the U.S. government for purposes of combatting pirates.

Despite the international and U.S. national legal frameworks for counterpiracy operations, ambiguities, gaps, and seams in the laws and their interpretation still exist.

- **The question of obligation:** International law provides the legal justification for a nation to pursue pirates, but it does not obligate that nation to undertake counterpiracy actions or cooperate with those nations that are undertaking such actions. This lack of obligation gives each nation the maximum flexibility in how to respond to piracy but complicates cooperation on an international response.
- **The problem of capability and capacity:** Counterpiracy efforts are limited by each nation's military, law enforcement, legal, judicial, or corrections capability and capacity. Some nations do not have adequate military or law enforcement forces to effectively pursue and apprehend pirates. Some nations do not have the legal framework or judicial capacity to prosecute pirate suspects, while others may not have the corrections capacity to imprison convicted pirates.
- **The challenge of political will:** International cooperation on counterpiracy actions is entirely dependent on the political will of the nations involved. Some nations do not believe that piracy threatens their national interests. Other nations may want to take actions but lack the support of their own populace, are worried about the expense of such actions, or are worried about the repercussions of apprehending and prosecuting pirates.

- **Pursuing the proceeds of piracy:** Most counterpiracy actions are directed against the pirates at sea, and very little effort has been directed against those ashore who profit from or support piracy. Some nations have national laws that can be used against piracy supporters, but they are only effective within those countries themselves. There is no international set of authorities that would allow for actions to be taken against pirate supporters or those who profit from piracy.

A number of actions can be taken to address these ambiguities, gaps, and seams in the counterpiracy legal framework.

- **Achieving consensus on definitions:** International consensus still lacks several crucial definitions that would enable counterpiracy actions. These are what constitutes the intent to engage in piracy, what constitutes support to piracy, and how are piracy suspects and convicted pirates to be handled. International consensus on these definitions would allow nations to take actions against those suspected of piracy, pursue piracy supporters, and establish a basis for piracy prosecution and corrections within their own national legal structures.
- **Accommodating legal diversity:** Each nation pursues counterpiracy in accordance with its own national laws. Cooperation between nations on counterpiracy operations must account for these legal differences. Recognizing what each nation can and cannot do and accommodating these differences within the rules of engagement and operational planning is vital for counterpiracy cooperation.
- **Adapting to capacity and capabilities:** Cooperative counterpiracy efforts must adapt to the capacities and capabilities of the judicial and corrections systems of the nations participating. Developing the most simple and commonly shared set of rules of evidence and forensics collection would more easily allow each nation to prosecute pirate suspects and imprison convicted pirates.

The framework for counterpiracy

Our first step in developing a framework for a whole-of-government counterpiracy approach is to understand the criminal incentives that lead to and support piracy. As with every criminal activity, these incentives are motive, opportunity, and means. Any counterpiracy approach would have to include actions targeted at one or more of these criminal incentives.

We also analyzed counterpiracy actions to understand their effect on piracy. From this we developed four effects:

- Prevent—To preclude people from engaging in piracy and/or keep pirates from entering the maritime domain
- Protect—To safeguard and shield maritime traffic from maritime piracy
- Respond—To react to a piracy incident in order to thwart/stop the activity, or in cases where a ship is successfully attacked, to resolve the situation
- Adjudicate—To investigate incidents and/or prosecute pirates

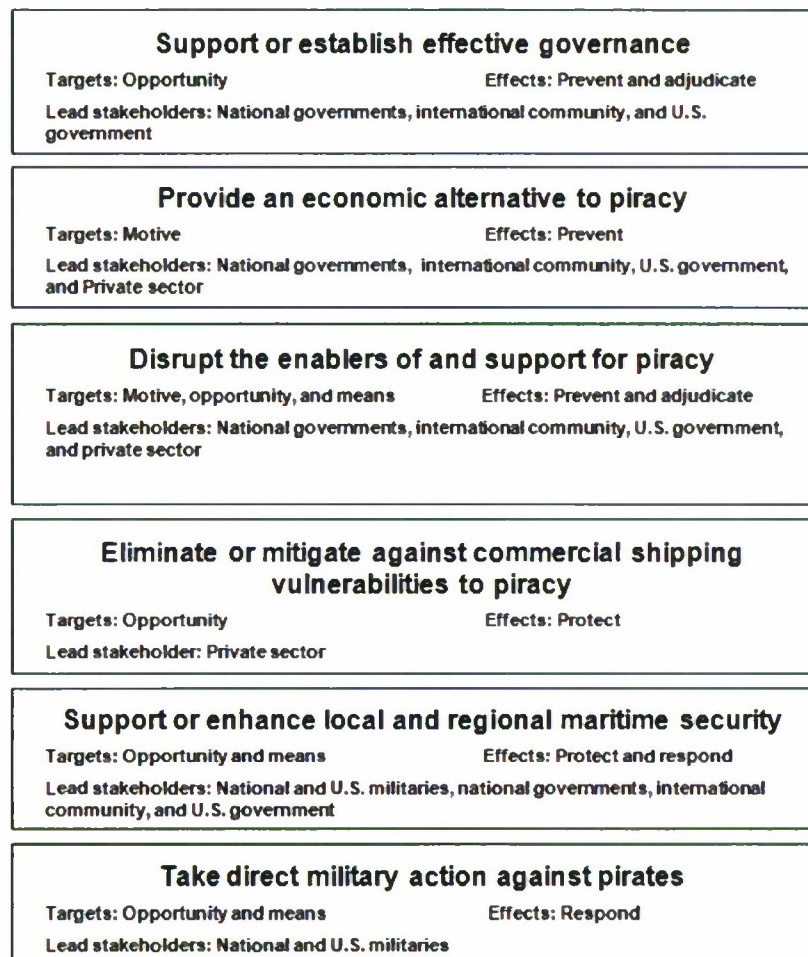
We also examined the six lead stakeholders for each counterpiracy action: the international community, the U.S. government, other national governments, the U.S. military, other national militaries, and the private sector.

Through our analysis, we grouped all counterpiracy actions into six generalized approaches. Each approach targets one or more of the criminal incentives, includes actions that have one or more of the noted effects on piracy, and is led by one or more of our listed stakeholders. This framework for counterpiracy is shown in figure 2.

When we compare our framework with past and current counterpiracy efforts, we see that most of these efforts are within two of our approaches: eliminating or mitigating commercial shipping vulnerabilities to piracy and taking direct military action against pirates. There have been some attempts to engage regional governments in order to enhance their capacities and capabilities or to assist in the prosecution of pirate suspects, but most efforts have been in enhancing the protection of merchant shipping and conducting naval counterpiracy patrols.

A comprehensive whole-of-government approach to counterpiracy must include all elements of our framework. Increasing the protection of merchant shipping and taking direct military action against pirates and suspected pirates is reactive and treats piracy symptoms, not the root causes. Reestablishing good governance and providing an economic alternative to piracy treats the root causes of piracy, but requires long-term and sustained commitment by the international community and national governments because these approaches can take considerable time and effort. Disrupting the enablers of and support for piracy provides nonmilitary actions that treat criminal symptoms of piracy while trying to undermine its support over the long term. Supporting or enhancing local and regional maritime security is part of a strategy of helping those to help themselves, but is most successful in addressing routine piracy and local maritime criminal activity but not the levels of international piracy we are seeing off Somalia.

Figure 2. Summary of the framework for counterpiracy



The role of U.S. Naval Forces Africa

U.S. Naval Forces Africa has both direct and support roles in this comprehensive approach to counterpiracy. Its direct role involves inherently military activities:

- Building counterpiracy capability and capacity in African military forces as part of its engagement activities
- Planning for and potentially executing direct military actions on the African landmass

The command support role includes the following:

- Coordinating with and providing military support to multinational counterpiracy forces operating in the Gulf of Aden and Indian Ocean
- Providing support as required to international and other government agencies' counterpiracy activities
- Helping the private sector identify and disseminate the commercial shipping best practices and learn how to work with counterpiracy military forces in the event of a pirate attack

Finally, the command has a role in advocating for counterpiracy missions. This advocacy role includes the following:

- Raising counterpiracy with its combatant command and other U.S. government agencies and explaining its strategic and operational challenges
- Using the counterpiracy framework itself as a tool to organize, coordinate, track, and assess the whole-of-government counterpiracy effort

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